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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,172	12/02/2003	Roger H. Hamilton	998_001CIP	4133

20874 7590 01/18/2006

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EXAMINER

YIP, WINNIE S

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/726,172		HAMILTON ET AL.	
	Examiner		Art Unit	
	Winnie Yip		3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 4 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>January 19, 2005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is office action in response applicant's reply filed on November 4, 2005.

Election/Restrictions

1. Applicant's election with traverse of specie in the reply filed on November 4, 2005 is acknowledged. The traversal is on the ground that the subject matter of all claims should be complete search. This is not found persuasive because the present application contains two patentably distinct species. We agreed that examiner is require to consider the entire application if there is without burden. However, under 35 U.S.C. 121, there is only a single disclosed species for required prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. The present application of first specie requires a walker, and the second specie requires a wheelchair with different attachment. These two species are patentable distinct. An argument that a claim is allowable or that all claims are generic is considered nonresponsive. Since applicant does not point out why these species are obvious variants and not patentably distinct, the argument is not found persuasive.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

The requirement is still deemed proper and is therefore made FINAL.

Art Unit: 3636

2. Claim 4 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected specie, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in the reply filed on November 4, 2005.

Claim Objections

1. Claim 2 is objected to because of the following informalities: the language "first retaining means" is confusing whether it is new feature or an exit feature. It appears to read "further including first retaining means". Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 3, the limitation "said first retaining means" (line 1) lacks a sufficient antecedent basis for this limitation in the claim. This feature is not previously defined in claim 1 but in claim 2. A proper dependency is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3636

5. Claims 1-3, 5-7, 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Locarno (US Patent No. 5,288,001).

Locarno shows and discloses a carrier for retaining an oxygen bottle to a appliance such as a wheelchair, the carrier comprising a flexible open-top container (2) being capably used for maintaining a close fitting relationship with an oxygen bottle, the container including an upper mouth made of at least partially from a stiff material that enable the oxygen bottle to be located therein vertically, a flexible strap (18, 20) having a central portion being connected to and adjacent to an opening of the container to increase rigidity of the opening of the container (2) to provide a flexible upper bottle retaining portion for preventing the bottle from falling out of the carrier as claimed, a pair of upper stabilizing straps (10, 12, 18, 20) with buckles (14) providing a first retaining means for engaging the upper portion of the carrier to the orthopedic appliance, and a pair of lower stabilizing straps (26, 28) providing a second retaining means for engaging the bottom of the carrier with the legs of the appliance.

6. Claims 1-3, 5-6, 8, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Sanders (US Patent No.5,154,331).

Sanders shows and discloses a carrier that is capably used for retaining an oxygen bottle to a appliance such as a wheelchair, the carrier (10) comprising a flexible open-top container (48) being capably used for maintaining a close fitting relationship with an oxygen bottle, the container including an upper mouth portion being made of at least partially from a stiff material that enabling a oxygen bottle (instead of the umbrella as shown) to be located therein vertically, the upper portion (30) of the container having a flexible upper bottle retaining portion (70) that is

Art Unit: 3636

capable for preventing the bottle from the falling out of carrier, the upper portion including a connection strip (34) to provide a first retaining means for engaging the upper portion of the carrier to the orthopedic appliance, and a lower stabilizing strap (60) providing a second retaining means for engaging the bottom of the carrier with the leg (62) of the appliance, the carrier also including compartments for retaining personal items (63, 64).

7. Claims 1-3, 5-8, and 11-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Milluzzi (US Patent No. 5,871,183).

Milluzzi shows and discloses a carrier that is capably used for retaining an oxygen bottle to a appliance such as an appliance (10), the carrier comprising a flexible open-top container (12) being capably used for maintaining a close fitting relationship with an oxygen bottle, the container including an upper mouth portion being made of at least partially from a stiff material that enabling a oxygen bottle (instead of golf poles) to be located therein vertically, the upper portion (28) of the container having a flexible upper bottle retaining portion that is capable for preventing the bottle from the falling out of carrier, the upper portion including a connection strap (47a, 47b) with removable buckles (62) to provide a first retaining means for engaging the upper portion of the container to the orthopedic appliance, and a lower stabilizing strap (92) with removable buckles (62) providing a second retaining means for engaging the bottom of the container to the leg (14) of the appliance, the carrier also including a pocket (46) attached to an front surface of the container for retaining personal items.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno '001 as applied to claim 1 above, and further in view of Milluzzi '183.

Locarno teaches all limitations of the claimed invention as explained and applied set forth above rejections except that Locarno does not define the carrier having a means for retaining personal items. Milluzzi teaches a carrier for an appliance, the carrier (10) having an elongated cylindrical container (12) having a pocket (46) formed on a front surface of the container for retaining personal items. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno having a pocket mounted on the front surface of the container as taught by Milluzzi for easily retaining personal items when use the appliance such as the wheelchair.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno '001 as applied to claim 11 above, and further in view of Griffin (US patent No. 6,299,043).

Locarno teaches all limitations of the claimed invention as explained and applied set forth above rejections except that Locarno does not define the upper bottle retaining portion having a drawstring for selectively reducing the diameter of the upper portion of the container as claimed. Griffin teaches a carrier used for retaining a bottle in a vertical position, the carrier comprising a

Art Unit: 3636

container having an upper bottle retaining portion (111) including a drawstring (108) passed therethrough to be pulled for selectively reducing the opening of the container to retain the bottle inside of the container. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the carrier of Locarno having the flexible upper bottle retaining portion being provided with a sleeve and a drawstring passed therethrough as taught by Griffin as a known mechanism for reducing opening of the container to retain the bottle inside of the container.

Allowable Subject Matter

3. Claims 9-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Citations

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hebert et al. teaches a container having an open mouth portion with a flexible upper bottle retaining portion including a drawstring as similar to the claimed invention. Wells '903, Bohl et al. '884 and Springmann '197 teach various carriers connected to an appliance as similar to the claimed invention.

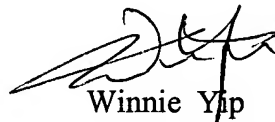
Inquiry Contacts

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 571-272-6870. The examiner can normally be reached on M-F (9:30-5:30).

Art Unit: 3636

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip
Primary Examiner
Art Unit 3636

wsy
January 12, 2006